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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-1694

THE PEOPLE OF THE STATE OF NEW YORK,
Petitioner,

v.

ROBERT NEWMAN, M. D.,
Respondent.

On Petition for Writ of Certiorari to the
Court of Appeals of the State of New York

PETITIONER'S REPLY MEMORANDUM

FRANK S. HOGAN
District Attorney
New York County
Attorney for Petitioner
155 Leonard Street
New York, New York 10013
(212) 732-7300

MICHAEL R. JUVILER
JONATHAN LOVETT
Assistant District Attorneys
Of Counsel

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Respondent's contention that certiorari should be denied simply because the proceedings to enforce the subpoena *duces tecum* are moot is unpersuasive. A viable controversy exists between the parties regarding the validity of respondent's conviction for contempt of court. And since any future execution of respondent's sentence would not be affected by the prior expiration of the Third July 1972 Grand Jury, this case is neither moot nor does it involve any complex jurisdictional issue.

Moreover, respondent's argument regarding the enforceability of the subpoena, which is purely an issue of New York State law, is factually erroneous and legally without support. Contrary to respondent's statement that the investigation into the death of Talmadge Berry is no longer "viable" (Respondent's brief, p. 8), a new investigation was commenced after the expiration of the Third July 1972 Grand Jury and is currently pending before another New York County grand jury. Contrary to respondent's assertion that the challenged subpoena was "issued by that particular [Third July 1972] grand jury" (*id.*), the subpoena was issued, as is clear from its face, by the District Attorney, counsel for petitioner. *See* Appendix. Contrary to respondent's suggestion that the subpoena was returnable only before the Third July 1972 Grand Jury, the express language of the subpoena imposed no such limitation. *Ibid.* And despite respondent's unsupported conclusion that the proceedings below to compel compliance with subpoena are moot (Respondent's brief, p. 8), it is clear that the New York State courts would require respondent's compliance with the subpoena should this Court reverse the judgment of the Court of Appeals.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

FRANK S. HOGAN
District Attorney
New York County

MICHAEL R. JUVILER
JONATHAN LOVETT
Assistant District Attorneys
Of Counsel

July, 1973

Subpoena Duces Tecum

SUBPOENA (Duces Tecum) FOR A WITNESS
TO ATTEND THE GRAND JURY

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK.

To Robert Newman, Director, New York City
Methadone Maintenance Treatment Program.

YOU ARE COMMANDED to appear before the Grand Jury of the County of New York, at the Grand Jury Room, in the ninth story of the Criminal Courts Building, at 155 Leonard Street, between Centre and Baxter Streets, in the Borough of Manhattan of The City of New York, on the 11 day of July, 1972, at the hour of 1:30 in the afternoon of the same day, as a witness in a criminal Investigation into the Death of Talmadge Berry and that you bring with you and produce, at the time and place aforesaid, a certain photographs of Negro males between the ages of 21-35, who were patients at the Methadone Maintenance Program at Francis Delafield Hospital in unit number two during the calendar year 1972 prior to June 7, 1972, now in your custody, and all other deeds, evidences and writings which you have in your custody or power concerning the premises, and for a Failure to Attend you will be deemed guilty of a Criminal Contempt of Court, and liable to a Fine of Two Hundred and Fifty Dollars and Imprisonment for thirty days and to be prosecuted and punished for a misdemeanor.

Dated at the Borough aforesaid, in the County of New York, the 30 day of June, 1972.

FRANK S. HOGAN, District Attorney.

SO ORDERED:

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Justice of the Supreme Court